

**Proposed Amendments to Chapter 118 (Chesapeake Bay Preservation Ordinance)
of
The Code of the County of Fairfax**

Staff comments on the proposed changes are shown in italics between passages of text. Changes to the amendments advertised for the Planning Commission Public Hearing held on January 15, 2003, are shown in red (online version only) with double strike through and double underline.

Amend the Chesapeake Bay Preservation Ordinance to read as follows:

CHAPTER 118.

Chesapeake Bay Preservation Ordinance

Article 1. General Provisions and Definitions.

- § 118-1-1. Title.
- § 118-1-2. Authority.
- § 118-1-3. Enactment.
- § 118-1-4. Findings.
- § 118-1-5. Purpose and Intent.
- § 118-1-6. Definitions.
- § 118-1-7. Areas of Applicability.
- § 118-1-8. Administration.
- § 118-1-9. Chesapeake Bay Preservation Area Boundaries.
- § 118-1-10. Severability.
- § 118-1-11. Conflicts.
- § 118-1-12. **Vested Rights.**

Article 2. Allowed Uses, Development and Redevelopment.

- § 118-2-1. Allowed Uses, Development and Redevelopment in Resource Protection Areas.
- § 118-2-2. Allowed Uses, Development and Redevelopment in Resource Management Areas.
- § 118-2-3. Use Regulations.
- § 118-2-4. Exceptions.

Article 3. Land Use and Development Performance Criteria.

- § 118-3-1. Purpose and Intent.
- § 118-3-2. General Performance Criteria for Resource Management Areas and Resource Protection Areas.
- § 118-3-3. Additional Performance Criteria for Resource Protection Areas.

Article 4. Water Quality Impact Assessments.

- § 118-4-1. Purpose and Intent.
- § 118-4-2. Applicability.
- § 118-4-3. Water Quality Impact Assessment Components.

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- § 118-4-4. Submission and Review Requirements for Water Quality Impact Assessments.
- ~~§ 118-4-5. Evaluation Procedures for Water Quality Impact Assessments.~~

Article 5. Administrative Nonconformities, Waivers, Exceptions, and Exemptions.

- § 118-5-1. ~~Waivers for Existing Structures and Uses~~ Nonconforming Uses and Noncomplying Structures.
- § 118-5-2. Public Utilities, Railroads, Public Roads, and Facilities Exemptions.
- § 118-5-3. Additional Exemptions.
- ~~§ 118-5-4. Waivers for Loss of Buildable Area in a Resource Protection Area.~~
- ~~§ 118-5-5. Exceptions for Minor Additions to Existing Principal Structures.~~

Article 6. Exceptions.

- § 118-6-1. Granting of Exceptions.
- ~~§ 118-6-2. Exceptions for Loss of Buildable Area in a Resource Protection Area.~~
- ~~§ 118-6-3. Exceptions for Water Quality Improvement Facilities or Measures.~~
- ~~§ 118-6-4. Exceptions to Modify the Buffer Area Width for Agricultural Lands.~~
- ~~§ 118-6-5. Resource Protection Area Exceptions.~~
- ~~§ 118-6-6. Factors for Consideration in Evaluating Resource Protection Area Exceptions Requests.~~
- ~~§ 118-6-7. Exceptions to Waive Resource Management Area Performance Criteria.~~
- ~~§ 118-6-8. Minor Additions.~~
- ~~§ 118-6-2. Conduct of Public Hearings.~~
- ~~§ 118-6-3. Required Notice for Public Hearings.~~
- ~~§ 118-6-4. Withdrawal of Application.~~
- ~~§ 118-6-5. Submission Requirements for Exception Requests.~~
- ~~§ 118-6-6. Required Findings.~~
- ~~§ 118-6-7. Exceptions for Loss of Buildable Area in a Resource Protection Area.~~
- ~~§ 118-6-8. Exceptions for Accessory Structures.~~
- ~~§ 118-6-9. Exceptions for Approved and Pending Plans of Development.~~
- ~~§ 118-6-9.10. General Resource Protection Area Encroachment Exception.~~

Article 7 Exception Review Committee.

- § 118-7-1. Purpose.
- § 118-7-2. Authority and Establishment.
- § 118-7-3. Membership.
- § 118-7-4. Officers.
- § 118-7-5. Meetings.
- § 118-7-6. Records.
- § 118-7-7. Duties.

Article ~~7~~ 8. Appeals.

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§ 118-~~78~~-1. Procedures

Article ~~8~~9. Violations and Penalties.

§ 118-~~89~~-1. General Provisions .

§ 118-~~89~~-2. Criminal Violations and Penalties.

§ 118-~~89~~-3. Civil Penalties.

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ARTICLE 1.

General Provisions and Definitions.

Section 118-1-1. Title.

This Chapter shall hereafter be known, cited, and referred to as the "Chesapeake Bay Preservation Ordinance" of Fairfax County.

Section 118-1-2. Authority.

This ordinance is enacted pursuant to the authority and mandates of the Chesapeake Bay Preservation Act, Sections 10.1-2100, et seq., of the *Code of Virginia*.

Section 118-1-3. Enactment.

This Chapter shall be effective at 12:01 A.M. on July 1, 1993.

Section 118-1-4. Findings.

(a) The Chesapeake Bay is one of the most productive estuaries in the world, providing substantial economic and social benefits to the people of the Commonwealth of Virginia. Healthy state and local economies are integrally related to and dependent upon the health of the Chesapeake Bay, therefore the general welfare of the people of Fairfax County and the Commonwealth depends on the health of the Bay.

(b) The Chesapeake Bay waters have been degraded significantly by many sources of pollution, including nonpoint source pollution from land uses and development. While nonpoint source pollution from an individual property may not be substantial, cumulative negative impacts of pollution from developed and developing properties, as well as from agricultural lands, have been significant. Existing high quality waters are worthy of protection from degradation to guard against further pollution, and the quality of other state waters should be improved. Certain lands that are proximate to shorelines and streams have intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation of the quality of state waters and the Chesapeake Bay. Other lands have severe development constraints from erosion and soil limitations. With proper management, they offer significant ecological benefits by providing water quality maintenance and pollution control, as well as flood and erosion control. These lands, designated by the Board of Supervisors of Fairfax County as Chesapeake Bay Preservation Areas ("CBPAs"), need to be protected and managed to prevent destruction and damage in order to protect the quality of water in the Bay and other state waters, and consequently the quality of life in Fairfax County and the Commonwealth of Virginia.

(c) The entirety of Fairfax County drains into the Potomac River and ultimately the Chesapeake Bay. Any use or development within the County can, therefore, impact the water quality of the Bay.

(d) While certain lands have intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation of

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the quality of state waters, it is recognized that some activities, including the provision of infrastructure, may need to be located in these areas. It is also recognized that certain exceptions to requirements regarding these lands may be appropriate.

(e) The mandates of the Act constitute a material change in circumstances substantially affecting the public health, safety and welfare and necessitating an appropriate legislative response by the Board of Supervisors.

Section 118-1-5. Purpose and Intent.

The purpose and intent of this Chapter is to encourage and promote: (1) the protection of existing high quality state waters; (2) the restoration of all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (3) the safeguarding of the clean waters of the Commonwealth from pollution; (4) the prevention of any increase in pollution; (5) the reduction of existing pollution; and (6) water resource conservation in order to provide for the health, safety and welfare of the present and future citizens of Fairfax County and the Commonwealth of Virginia.

Section 118-1-6. Definitions.

For the purposes of this Chapter:

(a) "Agricultural land" means:

(1) Any area of land of five (5) acres or more upon which crops are produced or raised, except trees that are produced for timber;

(2) Any tract of land used as a nursery on which plants are raised or kept for transplanting, for use as stock for budding or grafting, or for sale, regardless of the area of the tract; and

(3) Any tract of land on which kennels, horses, poultry, or livestock are maintained regardless of the area of the tract.

(b) "Applicant" means a person who has submitted a plan of development to the Department of ~~Environmental Management~~ Public Works and Environmental Services or an exception request to the Director.

(c) "Average land cover conditions" means the average percent of impervious area within the County, as set forth in the Fairfax County Public Facilities Manual.

(d) "Best Management Practice" or "BMP" means a practice, or combination of practices, that is determined by the Director to be the most effective, practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

(e) "Buffer area" means an area of natural or established vegetation managed to protect other components of a Resource Protection Area and state waters from significant degradation due to land disturbances.

(f) "Chesapeake Bay Preservation Area" or "CBPA" means any land designated by the County pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management

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Regulations and Section 10.1-2107 of the Code of Virginia. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

(g) "Development" means the construction, rehabilitation, rebuilding or substantial alteration of residential, commercial, industrial, institutional, recreational, transportation, or utility uses, facilities or structures which results in a net increase in impervious area within an RPA and/or a net increase in impervious area within an RMA of greater than 20%, relative to conditions prior to development.

(h) "Director" means the Director of the Department of Public Works and Environmental Services ~~Environmental Management~~.

(i) "Highly erodible soils" means soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula $RKLS/T$, as defined by the "Food Security Act (F.S.A.) Manual" of August, 1988 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Soil Conservation Service, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

Implements changes to 9 VAC 10-20-40.

(j) "Highly permeable soils" means soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid") as found in the "National Soils Survey Handbook" of July, 1983 ~~November 1996~~ in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resources ~~Soil~~ Conservation Service.

Implements changes to 9 VAC 10-20-40.

(k) "Impervious area" or "impervious surface" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, and concrete, asphalt, or compacted gravel surfaces. "Impervious area" or "impervious surface" does not include the water surface area of a swimming pool.

(l) "Intensely Developed Area" or "IDA" means an area of existing development and infill sites where development is concentrated and little of the natural environment remains as of the date of adoption of this Chapter and which is so designated on the map of Chesapeake Bay Preservation Areas adopted by the Board of Supervisors pursuant to Section 118-1-9. An IDA must ~~contain~~ satisfy at least one of the following conditions as of July 1, 1993: development has severely altered the natural state of the area such that it has more than fifty percent (50%) impervious surface; public sewer and water ~~is~~ systems, or a constructed stormwater drainage system, or both, have been constructed and serves the area as of the date of adoption of this Chapter; or housing density is equal to or greater than four dwelling units per acre.

Implements changes to 9 VAC 10-20-100.

(m) "Land disturbing activity" means any land change which may result in soil erosion from

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water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, permanent flooding associated with the impoundment of water, and filling of land.

(n) "Lot" means a parcel of land that is designated at the time of application for a special permit, a special exception, a site plan, a building permit, residential/non-residential use permit, or other plan of development, as a tract of land which is to be used, developed or built upon as a unit under single ownership. A parcel of land shall be deemed to be a lot in accordance with this definition, regardless of whether or not the boundaries thereof coincide with the boundaries of lots or parcels as shown on any map of record or other plans of development.

(o) "Major floodplain" means those land areas in and adjacent to streams and watercourses subject to continuous or periodic inundation from flood events with a one (1) percent chance of occurrence in any given year (i.e., the 100-year flood frequency event) and having a drainage area equal to or greater than three hundred and sixty (360) acres.

(p) "Nonpoint source pollution" means pollution consisting of constituents such as sediment, nutrients, and organic and toxic substances from diffuse sources, such as runoff from agriculture and urban land development and uses.

(q) "Nontidal wetlands" means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to Sec. 404 of the Federal Clean Water Act, in 33 CFR 328.3b, dated November 13, 1986, or as subsequently amended.

(r) "Noxious weeds" means Johnson grass, kudzu, poison ivy, ragweed, poison oak, poison sumac, purple loosestrife, and multiflora rose and any other species hereinafter designated by the State as a noxious weed.

The Virginia Legislature has declared purple loosestrife to be a noxious weed (SB 162 approved 4/4/00).

(s) "Passive recreation" means recreational activities that are commonly unorganized and non-competitive, including, but not limited to, picnicking, bird watching, kite flying, bicycling, and walking. Site amenities for such activities include, but are not limited to, picnic tables, photo stands, open play areas where substantial clearing is not required, rest rooms, tot lots, boardwalks, paved paths, pathways, benches, and pedestrian bridges and appurtenant structures.

(t) "Plans of development" means plans, including but not limited to, development plans, conceptual development plans, final development plans, generalized development plans, special exception plats, special permit plats, variance plats, PRC plans, minor site plans ~~waivers and exceptions, preliminary site plans~~, site plans, preliminary subdivision plats, final subdivision plats, subdivision waivers and exceptions, conservation plans, construction plans, rough grading plans, grading plans, and plans associated with wetlands permits.

(u) "Public roads" means roads that satisfy construction, siting and water quality standards applicable to roads constructed by the Virginia Department of Transportation or other publicly owned roads that meet such standards.

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(v) "Redevelopment" means the substantial alteration, rehabilitation, or rebuilding of a property for residential, commercial, industrial, or other purposes where there is no net increase in impervious area by the proposed redevelopment within an RPA and no more than a net increase in impervious area within an RMA of 20% relative to conditions prior to redevelopment, or any construction, rehabilitation, rebuilding, or substantial alteration of residential, commercial, industrial, institutional, recreational, transportation, or utility uses, facilities or structures within an IDA.

(w) "Resource Management Area" or "RMA" means that component of the Chesapeake Bay Preservation Area comprised of lands that, if improperly used or developed, have a potential for causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area.

(x) "Resource Protection Area" or "RPA" means that component of the Chesapeake Bay Preservation Area comprised of lands ~~at or near the shoreline or water's edge~~ adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation of the quality of state waters. In their natural condition, these lands provide for the removal, reduction, or assimilation of sediments, nutrients, and potentially harmful or toxic substances from runoff entering the Bay and its tributaries, and minimize the adverse effects of human activities on state waters and aquatic resources.

Implements changes to 9 VAC 10-20-40.

(y) "Silvicultural activity" means any forest management activity, including ~~logging, log transportation, and forest roads~~ but not limited to the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation that is conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to § 10.1-1105 of the Code of Virginia and is located on property defined as real estate devoted to forest use under § 58.1-3230 of the Code of Virginia.

Implements changes to 9 VAC 10-20-40.

(z) "Substantial alteration" means expansion or modification of a structure or development ~~which~~ that would result in disturbance of any land within a Resource Protection Area or land exceeding an area of 2,500 square feet within a Resource Management Area.

(aa) "Tidal shores" or "shore" means land contiguous to a tidal body of water between the mean low water level and the mean high water level.

(bb) "Tidal wetlands" means vegetated and nonvegetated wetlands as defined in Chapter 116, Wetlands Zoning Ordinance, of the Fairfax County Code.

(cc) ~~"Tributary stream" means any perennial stream that is so depicted on the most recent U.S. Geological Survey 7 1/2 minute topographic quadrangle map (scale 1:24,000).~~

Implements changes to 9 VAC 10-20-40.

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~~(dd cc)~~ "Use" means any purpose for which a structure or a tract of land may be designed, arranged, intended, maintained, or occupied; also, any activity, occupation, business or operation carried on, or intended to be carried on, in or on a structure or on a tract of land.

(dd) "Water body with perennial flow " means a body of water flowing in a natural or man-made channel year-round, except during periods of drought. The term "water body with perennial flow" includes perennial streams, estuaries, and tidal embayments. Lakes and ponds that form the source of a perennial stream, or through which the perennial stream flows, are a part of the perennial stream. The width of the perennial stream extends from top-of-bank to top-of-bank of the channel or to the limits of the normal water level for a pond or lake. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. In the absence of pollution or other manmade disturbances, a perennial stream is capable of supporting aquatic life.

[This definition of "Water body with perennial flow" shall be effective from (insert effective date of amendments) through December 31, 2003]

(dd) "Water body with perennial flow " means a body of water flowing in a natural or man-made channel year-round, except during periods of drought. The term "water body with perennial flow" includes perennial streams, estuaries, and tidal embayments. **A perennial stream means any stream that is both perennial and so depicted on the map of Chesapeake Bay Preservation Areas adopted by the Board of Supervisors pursuant to Section 118-1-9(a). Streams identified as perennial on the adopted map are based on field studies conducted by the Department of Public Works and Environmental Services.** Lakes and ponds that form the source of a perennial stream, or through which the perennial stream flows, are a part of the perennial stream. The width of the perennial stream extends from top-of-bank to top-of-bank of the channel or to the limits of the normal water level for a pond or lake. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. In the absence of pollution or other manmade disturbances, a perennial stream is capable of supporting aquatic life.

[This definition of "Water body with perennial flow" shall be effective January 1, 2004]

The second definition is a revised version of Option 2 in the re-advertised amendments. It will become effective at the end of the year after the DPWES perennial stream mapping is complete and the Chesapeake Bay Preservation Area map has been adopted by the Board.

The term "water body with perennial flow" is not explicitly defined in the State regulations. However, a definition is critical to implementing the regulations. The Public Facilities Manual will be amended concurrently to include a procedure for field determinations of stream perennality.

(ee) "Watercourse" means a stream with incised channel (bed and banks) over which waters are conveyed.

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(ff) "Water-dependent development" or "Water-dependent facility" means the development of land or a facility that cannot exist outside of a Resource Protection Area and must be located within a Resource Protection Area, either in whole or in part, by reason of the intrinsic nature of its operation. These facilities include, but are not limited to (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas; ~~and~~ (v) fisheries or other marine resources facilities; and (vi) stream bank stabilization measures.

Stream bank stabilization measures added to clarify an administrative interpretation.

(gg) "Wetlands" means tidal and nontidal wetlands.

Section 118-1-7. Areas of Applicability.

This Chapter and all regulations adopted hereunder shall apply to all land located within the unincorporated areas of Fairfax County.

(a) The County is divided into Resource Protection Areas ("RPAs") and Resource Management Areas ("RMAs") that are subject to the criteria and requirements of this Chapter. Portions of RPAs and RMAs may be designated by the Board at a future date as Intensely Developed Areas ("IDAs"). RPAs are protected from most development because, left intact, they function to improve and protect water quality. RMAs, which include all areas outside of RPAs, are regulated to protect RPAs and water resources from degradation resulting from development and land disturbing activity. IDAs are redevelopment areas within which the performance criteria for redevelopment within Article 3 shall apply.

(b) RPAs shall include any land characterized by one or more of the following features:

- (1) A tidal wetland;
- (2) A tidal shore;
- (3) A ~~tributary stream~~ water body with perennial flow;
- (4) A nontidal wetland connected by surface flow and contiguous to a tidal wetland or ~~tributary stream~~ water body with perennial flow;
- (5) A buffer area as follows:

- (i) Any land within a major floodplain;
- (ii) Any land within 100 feet of a feature listed in Sections 118-1-7(b)(1)-(4).

The full buffer area shall be designated as the landward component of the RPA notwithstanding the presence of permitted uses, encroachments, and permitted vegetation clearing in compliance with Article 3. Designation of the components listed in Sections 118-1-7(b)(1)-(4) shall not be subject to modification unless based on reliable, site-specific information as provided for in Section 118-1-9.

Implements changes to 9 VAC 10-20-80.

(c) RMAs shall include any area not designated as an RPA.

(d) Intensely Developed Areas (IDAs) shall include any area so depicted on the map of Chesapeake Bay Preservation Areas adopted by the Board of Supervisors pursuant to Section

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118-1-9.

Section 118-1-8. Administration.

The Director shall be responsible for the administration of this Chapter, except for Section 118-3-2(h) which shall be administered by the Director of Health Services.

Section 118-1-9. Chesapeake Bay Preservation Area Boundaries.

(a) There shall be a map of Chesapeake Bay Preservation Areas adopted by the Board of Supervisors.

(b) A reliable, site-specific evaluation shall be conducted to determine whether water bodies on or adjacent to development sites have perennial flow and RPA boundaries shall be adjusted, as deemed necessary by the Director, on the site, based on this evaluation of the site. The site-specific evaluations shall be conducted in accordance with this Chapter and the Public Facilities Manual.

Implements changes to 9 VAC 10-20-105. Developers will be required to perform site-specific determination of perennial stream flow based on in-field indicators until the County's perennial stream mapping project is complete (Estimated December 2003).

~~(b c)~~ It is the burden of the applicant to show the appropriate RPA and RMA boundaries, applying the criteria in Section 118-1-7, on all plans of development submitted for review to the Director. Where RPA and RMA boundaries on the adopted map differ from boundaries as determined from the text of this Chapter, the text shall govern. Such boundary locations shown on plans of development can be approved, modified or disapproved by the Director. The Director may require the submission of an RPA boundary delineation study from the applicant to determine if the location of the RPA boundary shown on the plan of development is in accordance with the text of this Chapter. The Director may make minor modifications to RPA boundaries on plans of development where such boundaries are irregular, as long as there is no net decrease of land in the RPA.

The Chesapeake Bay Local Assistance Department (CBLAD) has advised County staff that the State regulations do not provide local governments the authority to revise field-delineated RPA boundaries to address irregularities. Staff has not used this provision in reviewing plans of development so there is no objection to eliminating it. The added language makes clear the Director's authority to require RPA boundary delineation studies from applicants.

~~(e d)~~ Any landowner or agent of the landowner ~~may request the Director to determine the locations of RPA boundaries or may submit a site-specific determination of the location of RPA boundaries certified by certification from a professional engineer, land surveyor, or landscape architect, soil scientist, or wetland delineator certified or licensed to practice in the Commonwealth of Virginia for review and approval by the Director. For land in agricultural use, such site-specific determination of the location of RPA boundaries may be made by an agricultural water quality specialist designated by the Northern Virginia Soil and Water Conservation District. Such site-specific determinations of RPA boundaries shall be performed in accordance with the requirements of this Chapter and the Public Facilities Manual.~~

The Board was advised in 1992-93 that resources were not available to perform wetland

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delineations and that staff would only review the then newly prepared RPA guidance map for obvious errors. The existing language may lead landowners to believe that staff will perform detailed field investigations for RPA boundary delineations which is not what was intended. Therefore, the language is proposed to be deleted.

Soil scientists and wetland delineators have been performing wetland delineations, but up until now an additional certification by a licensed engineer, surveyor or architect has been required. Recent state legislation (SB61) provides for the certification of wetland delineators (effective July 1, 2004) and soil scientist have been certified by the state for some time. Because wetland delineators and soil scientists are now certified by the state, it is appropriate to include them here. Wetland delineators and soil scientists will still have to use surveyors to prepare the base maps but the change will allow them to be in responsible charge of the RPA delineation.

(d e) The adopted map of Chesapeake Bay Preservation Areas shall display the locations and boundaries of IDAs designated by the Board of Supervisors.

Section 118-1-10. Severability.

If any of the Articles, Sections, Paragraphs, sentences, clauses, or phrases of this Chapter shall be declared unconstitutional or invalid by a valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the validity of the Chapter in its entirety or any of the remaining Articles, Sections, Paragraphs, sentences, clauses, and phrases.

Section 118-1-11. Conflicts

Whenever any provision of this Chapter imposes a greater requirement or a higher standard than is required in any State or Federal statute or other County ordinance or regulation, the provision of this Chapter shall govern. Whenever any provision of any State or Federal statute or other County ordinance or regulation imposes a greater requirement or a higher standard than is required by this Chapter, the provision of such State or Federal statute or other County ordinance or regulation shall govern.

Section 118-1-12. Vested Rights

The provisions of this chapter shall not affect vested rights of any landowner under existing law¹.

ARTICLE 2.

Allowed Uses, Development and Redevelopment.

Section 118-2-1. Allowed Uses, Development and Redevelopment in Resource Protection Areas.

¹ See “Vesting Policy for Approved and Pending Plans of Development” adopted by the Board of Supervisors on [insert date of adoption].

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The following uses, development and redevelopment may be allowed within an RPA if otherwise permitted by the Zoning Ordinance and other law:

- (a) Water-dependent development, subject to compliance with the performance criteria of Article 3 of this Chapter;
- (b) Redevelopment, including all development within IDAs, subject to compliance with the performance criteria of Article 3 of this Chapter; and
- (c) Uses, development or redevelopment exempted under Article 5 of this Chapter or for which an exception allowing such use or development or redevelopment in an RPA is approved pursuant to Article 5 or Article 6 of this Chapter.

Article 5 has been included because administrative exceptions have been moved to Article 5.

- (d) Roads and driveways not exempted under Article 5 of this Chapter provided that:

- (1) There are no reasonable alternatives to aligning the road or driveway in or across the Resource Protection Area;
- (2) The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment into the Resource Protection Area and adverse impacts on water quality; and
- (3) The design and construction of the road or driveway satisfy all applicable criteria of this Chapter, including the approval submission of a Water Quality Impact Assessment.

(e) Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed, provided that:

- (1) The Director has conclusively established that location of the facility within the Resource Protection Area is the optimum location; and
- (2) The size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both; and
- (3) The facility must be consistent with Fairfax County's stormwater management program as approved by the Chesapeake Bay Local Assistance Board; and
- (4) All applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission;
- (5) Approval must be received from the Director prior to construction.

Routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed. It is not the intent of this subsection to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a Resource Protection Area.

Implements changes to 9 VAC 1-20-130.1.e.

Section 118-2-2. Allowed Uses, Development and Redevelopment in Resource Management Areas.

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Uses, development and redevelopment, otherwise permitted by the Zoning Ordinance and other law, shall be allowed in RMAs provided that the use, development or redevelopment is in compliance with the performance criteria set forth in this Chapter.

Section 118-2-3. Use Regulations.

All uses conducted in Chesapeake Bay Preservation Areas shall comply with the provisions of Section 6-1702 of the Public Facilities Manual.

Section 118-2-4. Exceptions.

Exceptions to these requirements may be allowed as set forth in Article 5 and Article 6 of this Chapter.

Article 5 has been added because administrative exceptions have been moved to Article 5.

ARTICLE 3.

Land Use and Development Performance Criteria.

Section 118-3-1. Purpose and Intent.

The purpose of this Article is to achieve the goals of the Chesapeake Bay Preservation Act and Section 118-1-5 through the establishment of criteria to implement the following objectives: prevent a net increase in nonpoint source pollution from new development based on average land cover conditions, achieve a 10% reduction in nonpoint source pollution from redevelopment, and achieve a 40% reduction in nonpoint source pollution from agricultural and silvicultural uses.

Section 118-3-2. General Performance Criteria for Resource Management Areas and Resource Protection Areas.

Unless waived or modified by other provisions of this Chapter, it shall be demonstrated to the satisfaction of the Director that any use, development, or redevelopment of land in Chesapeake Bay Preservation Areas meets the following performance criteria:

(a) No more land shall be disturbed than is necessary to provide for the ~~allowed~~ proposed use, development, or redevelopment.

Implements changes to 9 VAC 10-20-120.1

(b) Indigenous vegetation shall be preserved to the maximum extent ~~possible~~ practicable consistent with the use, development, or redevelopment ~~allowed~~ proposed.

Implements changes to 9 VAC 10-20-120.2

(c) Where the best management practices utilized require regular or periodic maintenance in order to continue their functions, such maintenance shall be ensured through a maintenance agreement with the owner or through some other mechanism or agreement that achieves an

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equivalent objective.

(d) Impervious cover shall be minimized consistent with the use, development, or redevelopment ~~allowed~~ proposed.

Implements changes to 9 VAC 10-20-120.2.5

(e) Any land disturbing activity that exceeds an area of 2,500 square feet shall comply with the requirements of Chapter 104 of the Fairfax County Code. The construction of single family dwellings, septic tanks and drainfields shall not be exempt from this requirement.

(f) For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices (BMPs) as follows:

(1) For development, the projected total phosphorus runoff pollution load for the proposed development shall be reduced by no less than forty (40) percent compared to phosphorus loads projected for the development without BMPs. This requirement shall not apply to any development that does not require a site plan pursuant to Article 17 of the Zoning Ordinance, that does not require subdivision approval pursuant to Chapter 101 of the Fairfax County Code, and that does not result in an impervious area of 18% or greater on the lot or parcel on which the development will occur.

(2) For development and redevelopment within the Water Supply Protection Overlay District, the phosphorus removal requirements for the overlay district shall apply if such requirements impose a higher standard than the requirements of this Chapter.

(3) For redevelopment of any property not currently served by one or more BMPs, the total phosphorus runoff pollution load from the property shall be reduced by at least ten (10) percent from the phosphorus runoff pollution load prior to redevelopment.

(4) For redevelopment of any property that is currently and adequately served by one or more BMPs, the projected phosphorus runoff pollution load after redevelopment shall not exceed the existing phosphorus runoff pollution load.

(5) Best management practices (BMPs) shall be reviewed, modified, waived and/or approved by the Director in accordance with Article 6 of the Public Facilities Manual. Waivers or modifications shall be subject to the following criteria:

(i) The requested waiver or modification to the criteria is the minimum necessary to afford relief;

(ii) Granting the waiver or modification will not confer upon the applicant any special privileges that are denied by this part to other property owners who are subject to its provisions and who are similarly situated;

(iii) The waiver or modification is in harmony with the purpose and intent of this part and is not of substantial detriment to water quality;

(iv) The waiver or modification request is not based upon conditions or circumstances that are self-created or self-imposed;

(v) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality; and

(vi) Other findings, as appropriate and required herein, are met.

The requirement for BMPs is located in VAC 10-20-120. Changes to 9 VAC 10-20-150.C.1.

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require that these criteria be met for all exceptions/waivers to the requirements of 9 VAC 10-20-120. Criteria (ii) & (iv) will substantially reduce the number of BMP waivers granted.

(6) The following options shall be considered to comply with paragraph (f) of this Section:

(i) Incorporation on the site of BMPs that achieve the required control as set forth in paragraphs (1) through (5) above. For the purposes of this subsection, the “site” may include multiple projects or properties that are adjacent to one another or lie within the same drainage area where a single BMP or a system of BMPs will be utilized by those projects in common to satisfy water quality protection requirements;

(ii) ~~Incorporating pro rata share payments pursuant to the authority provided in Section 15.2-2243 of the Code of Virginia or other contribution that results in achievement of equivalent water quality protection,~~ Compliance with a locally adopted regional stormwater management program which may include a Virginia Pollution Discharge Elimination System (VPDES) permit issued by the Department of Environmental Quality to a local government for its municipally owned separate storm sewer system discharges, that is reviewed and found by the Chesapeake Bay Local Assistance Board to achieve water quality protection equivalent to that required by this subsection; or

(iii) ~~Restoring a minimum of twenty (20) percent of the site to vegetated open space, which may include landscaped areas, for a redevelopment site that is completely impervious as currently developed~~ Compliance with a site-specific VPDES permit issued by the Department of Environmental Quality, provided that the local government specifically determines that the permit requires measures that collectively achieve water quality protection equivalent to that required by this subsection.

Implements changes to VAC 10-20-120.8.

(7) The requirements of paragraph (f) of this Section may be waived or modified for a property if the Director determines that the provision of BMPs is not practical or desirable due to constraints imposed by the dimensions or location of the property. Waivers or modifications shall be subject to the following criteria:

(i) The requested waiver or modification to the criteria is the minimum necessary to afford relief;

(ii) Granting the waiver or modification will not confer upon the applicant any special privileges that are denied by this part to other property owners who are subject to its provisions and who are similarly situated;

(iii) The waiver or modification is in harmony with the purpose and intent of this part and is not of substantial detriment to water quality;

(iv) The waiver or modification request is not based upon conditions or circumstances that are self-created or self-imposed;

(v) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality; and

(vi) Other findings, as appropriate and required herein, are met.

This section is typically applied to single infill lot grading plans and was originally included for that purpose. That distinction has been maintained here for tracking purposes (It makes it simpler to distinguish between BMP waivers for single lots and subdivision/site plans.) and

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because the review criteria may be interpreted differently for single lots than for site/subdivision plans. The requirement for BMPs is located in VAC 10-20-120. Changes to 9 VAC 10-20-150.C.1. require that these criteria be met for all exceptions/waivers to the requirements of 9 VAC 10-20-120. Criteria (ii) & (iv) will substantially reduce the number of BMP waivers granted.

(8) Any maintenance, alteration, use or improvement to an existing structure or use that does not degrade the quality of surface water discharge, as determined by the Director, may be exempted from the requirements of paragraph (f).

Implements 9 VAC 10-20-120.8.b.

(g) The Director shall require certification on all plans of development that all wetlands permits required by law will be obtained prior to commencement of land disturbing activities in any area subject to the plan of development review. No land disturbing activity on the land subject to the plan of development shall commence until all such permits have been obtained by the applicant and evidence of such permits has been provided to the Director.

(h) All on-site sewage disposal systems requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall be subject to the restrictions imposed by the State Water Control Board or the Virginia Department of Health. All on-site sewage disposal systems not requiring a VPDES permit shall be administered by the Director of ~~Health Services~~ the Department of Health and shall comply with the following provisions:

(1) Each disposal system shall be pumped out at least once every five years.

(2) For new development or redevelopment, each disposal system shall be provided with a reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site.

(i) Compliance with Chapter 68 of the Fairfax County Code shall be deemed to constitute compliance with this requirement. This requirement shall not apply to any parcel of land for which a site plan or preliminary subdivision plat was filed on or before May 21, 1973, and approved by November 20, 1976 if the Director of ~~Health Services~~ the Department of Health determines the parcel to have insufficient capacity to accommodate a reserve sewage disposal site except as may be required in the Commonwealth of Virginia Sewage Handling and Disposal Regulations.

(ii) Building shall be prohibited on the area of all such sewage disposal sites, including the reserve sewage disposal site, until the structure is connected to a public sewer or an on-site sewage treatment system which operates under a permit issued by the State Water Control Board.

~~(i) A soil and water quality conservation plan shall be implemented on agricultural land. The plan implemented shall:~~

~~—— (1) Be based upon the Field Office Technical Guide of the U.S. Department of Agriculture Soil Conservation Service and accomplish water quality protection consistent with this Chapter; and~~

~~—— (2) Be approved by the Northern Virginia Soil and Water Conservation District in accordance with the following schedule:~~

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~~(i) For those lands subject to this requirement on the date of adoption of this Chapter, plan approval shall be obtained by January 1, 1995.~~

~~(ii) For those lands that become subject to this requirement after the date of adoption of this Chapter, plan approval shall be obtained by January 1, 1995 or within ninety (90) days of the date of establishment of the subject use, whichever date is later.~~

(i) Land upon which agricultural activities are being conducted, including but not limited to crop production, pasture, and dairy and feedlot operations, or lands otherwise defined as agricultural land by the local government, shall have a soil and water quality conservation assessment conducted that evaluates the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management, and management of pesticides, and where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is being accomplished consistent with the Chesapeake Bay Preservation Act and this chapter.

(1) Recommendations for additional conservation practices need address only those conservation issues applicable to the tract or field being assessed. Any soil and water quality conservation practices that are recommended as a result of such an assessment and are subsequently implemented with financial assistance from federal or state cost-share programs must be designed, consistent with cost-share practice standards effective in January 1999 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resources Conservation Service or the June 2000 edition of the "Virginia Agricultural BMP Manual" of the Virginia Department of Conservation and Recreation, respectively. Unless otherwise specified in this section, general standards pertaining to the various agricultural conservation practices being assessed shall be as follows:

(i) For erosion and sediment control recommendations, the goal shall be, where feasible, to prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resources Conservation Service. However, in no case shall erosion exceed the soil loss consistent with an Alternative Conservation System, referred to as an "ACS", as defined in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resources Conservation Service.

(ii) For nutrient management, whenever nutrient management plans are developed, the operator or landowner must provide soil test information, consistent with the Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15).

(iii) For pest chemical control, referrals shall be made to the local cooperative extension agent or an Integrated Pest Management Specialist of the Virginia Cooperative Extension Service. Recommendations shall include copies of applicable information from the "Virginia Pest Management Guide" or other Extension materials related to pest control.

(2) A higher priority shall be placed on conducting assessments of agricultural fields and tracts adjacent to Resource Protection Areas. However, if the landowner or operator of such a tract also has Resource Management Area fields or tracts in his operation, the assessment for that

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landowner or operator may be conducted for all fields or tracts in the operation. When such an expanded assessment is completed, priority must return to Resource Protection Area fields and tracts.

(3) The findings and recommendations of such assessments and any resulting soil and water quality conservation plans will be submitted to the Northern Virginia Soil and Water Conservation District Board, which will be the plan-approving authority.

Implements changes to 9 VAC 10-20-120.9.

Section 118-3-3. Additional Performance Criteria for Resource Protection Areas.

The criteria in this Section shall apply specifically within RPAs and supplement the general performance criteria in Section 118-3-2.

(a) A Water Quality Impact Assessment shall be required for any proposed development or redevelopment within an RPA that is not exempt pursuant to Article 5 of this Chapter or for which an exception waiving this criteria is not approved pursuant to Article 6 of this Chapter.

(b) *Allowable Development:* Development is allowed within RPAs if it is water-dependent. New or expanded water-dependent activities shall comply with the following:

(1) Such activities shall not conflict with the Comprehensive Plan;

(2) Such activities shall comply with the performance criteria set forth in this Article;

(3) Any non-water dependent component shall be located outside of the RPA; and

(4) Access shall be provided with the minimum disturbance necessary, and where practicable possible, a single point of access shall be provided.

Implements changes to 9 VAC 10-20-130.1.b.(4).

(c) Redevelopment, outside of IDAs, is allowed within RPAs only if there is no increase in the amount of impervious area within the RPA and no further encroachment within the RPA and shall conform to the criteria set forth in this Chapter.

Implements changes to 9 VAC 10-20-130.1.c. Note that both development and redevelopment within RPAs is permitted in IDAs and such development/redevelopment may increase the impervious area and allow further encroachment into the RPA.

(d) *Buffer area requirements:* To minimize the adverse effects of human activities on the other components of the RPA, state waters, and aquatic life, a buffer area that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained, if present, and established where it does not exist. Notwithstanding permitted uses, encroachments, and vegetation clearing, authorized by this Chapter, the buffer area is not reduced in width. Where land uses such as agriculture or silviculture within the area of the buffer cease

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and the lands are proposed to be converted to other uses, the full buffer shall be reestablished in accordance with Section 118-3-3(f).

Implements changes to 9 VAC 10-20-80.B.5, 9 VAC 10-20-130.3, and 9 VAC 10-20-130.3.b.

In order to maintain the functional value of the buffer area, indigenous vegetation may be removed, subject to approval by the Director, from a buffer area only to provide for reasonable sight lines, access paths, general woodlot management, habitat management and other uses authorized by this Chapter, subject to the following:

Implements changes to 9 VAC 10-20-130.5.a.(3).

(1) Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff. Trees may be pruned or removed from the RPA buffer in an area no greater than 5,000 square feet or 25% of the buffer area, whichever is less, for all sight lines and vistas combined. The bounds of this area shall be determined in a manner acceptable to the Director and be based on identified vantage points and the portion of the shoreline to be viewed. Trees may not be removed where reasonable sight lines or vistas can be created by pruning trees alone. Pruning shall be performed in accordance with the Public Facilities Manual. No more than 25% of the trees 6 inches or greater in diameter at breast height (4.5 feet) may be removed from the areas designated for sight lines and vistas. Trees may not be pruned or removed within any RPA component listed in Section 118-1-7(b)(1) through (4). A written request for a determination by the Director that the proposed removal of vegetation from the RPA buffer is in accordance with the requirements of this Chapter is required. Such request shall include a plan showing the following: (i) the vantage points for the sight lines and vistas, (ii) the portion of the shoreline to be viewed, (iii) the area in which trees are to be pruned or removed, (iv) the location of all trees six (6) inches or greater in diameter at breast height (4.5 feet) or as required by the Director, and (v) the location of the trees to be removed or pruned. The request shall also indicate the type of replacement vegetation proposed. Trees may not be pruned or removed from the RPA buffer until a written determination is obtained from the Director that the proposed activity is in accordance with the requirements of this Chapter.

(2) Any path shall be constructed and surfaced so as to effectively control erosion. Paths serving individual residential lots shall be no more than four (4) feet in width except as necessary for handicapped access.

(3) Noxious weeds and dead, diseased, or dying trees or shrubbery may be removed ~~at the discretion of the landowner~~ provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff. ~~Silvicultural thinning may be conducted based upon the recommendation of a professional forester, arborist, or County extension agent provided that where removed, trees shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.~~ Vegetation may

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not be removed from any RPA component listed in Section 118-1-7(b)(1) through (4).

Changes to 9 VAC 10-20-130.5.a provide that “thinning of trees may be allowed pursuant to sound horticultural practices incorporated into locally-adopted standards.” However, staff cannot identify any standards that could be generally applied and effectively administered. Because commercial silvicultural activities are exempt under 118-5-3(c), the removal of dead, diseased, and dying trees is permitted, and the regulations are permissive (“may be allowed”), staff has chosen not to include provisions allowing thinning of trees in the County’s ordinance.

(4) For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements. For shoreline erosion control projects which propose the use of sea walls, rip-rap, groins or other structural means of stabilization, it shall be demonstrated to the satisfaction of the Director that vegetative techniques cannot be effectively utilized.

(e) On agricultural lands, the buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures, as ~~The buffer area shall be managed, only if~~ recommended by the Northern Virginia Soil and Water Conservation District, may be taken to prevent noxious weeds from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:

(1) Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice which, in the opinion of the Northern Virginia Soil and Water Conservation District Board, addresses the more predominant water quality issue on the adjacent land (erosion control or nutrient management) is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil tests, must be developed consistent with the Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15) administered by the Virginia Department of Conservation and Recreation.

(2) Agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when agricultural best management practices which, in the opinion of the Northern Virginia Soil and Water Conservation District Board, address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as “T,” as defined in the “National Soil Survey Handbook” of November 1996 in the “Field Office Technical Guide” of the U.S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil tests, must be developed, consistent with the Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15) administered by the Virginia Department of Conservation and Recreation. In conjunction with

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the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot wide buffer area.

(3) The buffer area is not required to be designated adjacent to agricultural drainage ditches if at least one best management practice which, in the opinion of the Northern Virginia Soil and Water Conservation District Board, addresses the more predominant water quality issue on the adjacent land – either erosion control or nutrient management – is being implemented on the adjacent land.

(4) If specific problems are identified pertaining to agricultural activities that are causing pollution of the nearby water body with perennial flow or violate performance standards pertaining to the vegetated buffer area, the Director, in cooperation with the Northern Virginia Soil and Water Conservation District, shall recommend a compliance schedule to the landowner and require the problems to be corrected consistent with that schedule. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

(5) In cases where the landowner or his agent or operator has refused assistance from the Northern Virginia Soil and Water Conservation District in complying with or documenting compliance with the agricultural requirements of this chapter, the district shall report the noncompliance to the Director. The Director shall require the landowner to correct the problems within a specified period of time not to exceed 18 months from their initial notification of the deficiencies to the landowner. The Director, in cooperation with the district, shall recommend a compliance schedule to the landowner. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

Implements changes to 9 VAC 10-20-130.5.b. Agricultural encroachments into the RPA were previously handled as exceptions under Section 118-6-4. The regulations do not explicitly require that any type of request be submitted for approval. Proposed encroachments are reviewed by the NVSWCD Board. Therefore, the provisions, as revised by the new regulations, have been moved to this section where a request is not required.

(f) Buffer area establishment: Where buffer areas are to be established, they shall consist of a mixture of overstory trees, understory trees, shrubs and groundcovers. The density of overstory trees shall be a minimum of 100 trees per acre. The density of understory trees shall be a minimum of 200 trees per acre. The density of shrubs shall be a minimum of 1089 plants per acre. If seedlings are used instead of container plants, the density of trees shall be doubled. Large caliper trees shall not be planted on slopes steeper than 2:1. Plant materials shall be randomly placed to achieve a relatively even spacing throughout the buffer. The Director may approve the use of a seed mixture as a supplement to or in lieu of individual plants for shrubs and groundcovers. Plants shall be native to the degree practical and adaptable to site conditions. Wetland plantings (including herbaceous plantings) and/or wetland seed mix shall be used where site conditions warrant. Plant materials and planting techniques shall be as specified in the Public Facilities Manual.

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ARTICLE 4.

Water Quality Impact Assessments.

Section 118-4-1. Purpose and Intent.

The purpose of the Water Quality Impact Assessment (WQIA) is to ensure protection of Resource Protection Areas consistent with the goals, objectives, and requirements of this Chapter through (1) the identification of the impacts of proposed development or redevelopment on water quality on lands within RPAs; (2) the assurance that, where development or redevelopment does take place within RPAs, it will be located on those portions of a site and in a manner that will be least disruptive to the natural functions of RPAs; and (3) the requirement of mitigation measures which will address water quality protection.

Section 118-4-2. Applicability.

A Water Quality Impact Assessment shall be required for any development or redevelopment within an RPA unless exempt under Article 5 or unless waived by the Director in accordance with the provisions of Section 118-6-5. A Water Quality Impact Assessment shall also be required for development or redevelopment within an RMA if the Director determines that such an assessment is necessary because of the unique characteristics of the site or because the intensity of the proposed development may cause significant impacts on the adjacent RPA.

Clarification that some activities are exempt and that the requirement can be waived.

Section 118-4-3. Water Quality Impact Assessment Components.

The Water Quality Impact Assessment shall:

- (a) Display the boundaries of the RPA;
- (b) Display and describe the location and nature of the proposed encroachment into and/or impacts to the RPA, including any clearing, grading, impervious surfaces, structures, utilities, and sewage disposal systems;
- (c) Provide justification for the proposed encroachment into and/or impacts to the RPA;
- (d) Describe the extent and nature of any proposed disturbance or disruption of wetlands;
- (e) Display and discuss the type and location of proposed best management practices to mitigate the proposed RPA encroachment and/or adverse impacts;
- (f) Demonstrate the extent to which ~~that~~ the proposed activity will comply with all applicable performance criteria of this Chapter; and
- (g) Provide any other information deemed by the Director to be necessary to evaluate potential water quality impacts of the proposed activity.

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Although a permitted use can, an exception (by its nature) can never demonstrate that it meets all applicable performance criteria. Demonstrating that an activity meets applicable performance criteria is more properly part of the evaluation of an exception request or permitted activity not a Water Quality Impact Assessment.

Section 118-4-4. Submission and Review Requirements for Water Quality Impact Assessments.

A minimum of four (4) copies of the Water Quality Impact Assessment shall be submitted to the Director for review in conjunction with the submission of a plan of development. The Director may, at his discretion, require additional copies of the Water Quality Impact Assessment to be submitted. Where the Water Quality Impact Assessment is submitted pursuant to an exception request under Article 5 or Article 6, the Water Quality Impact Assessment and the exception request may be submitted as a combined document.

By providing for exception requests and Water Quality Impact Assessments to be submitted as a combined document, the review process can be simplified.

~~Section 118-4-5. Evaluation Procedures for Water Quality Impact Assessments.~~

~~—Upon the completed review of a Water Quality Impact Assessment and proposed mitigation measures, the Director shall determine if the proposed development or redevelopment is consistent with the provisions of this Chapter and the following considerations:~~

- ~~—(a) Whether the encroachment into the RPA is the minimum necessary for the proposed activity;~~
- ~~—(b) Whether the amount of impervious surface within the RPA is the minimum required to achieve the proposed activity;~~
- ~~—(c) Whether the disturbance of and impact on the RPA are minimized; and~~
- ~~—(d) Whether all of the applicable performance criteria are met.~~

The Water Quality Impact Assessment should only be evaluated for completeness and accuracy. These are actually evaluation standards for the proposed activity and are covered elsewhere in the performance requirements or exception evaluation criteria.

ARTICLE 5.

Administrative Nonconformities, Waivers, Exceptions, and Exemptions.

~~Section 118-5-1. Waivers for Existing Structures and Uses~~ Nonconforming Uses and Noncomplying Structures.

(a) Any structure or non-agricultural use that was legally established in accordance with the all applicable provisions of the Fairfax County Code in effect at the time of establishment, and was in existence on ~~March 1, 2003~~ [insert effective date of amendments] the effective date of this Chapter, or a structure or non-agricultural use established in accordance with ~~Section 118-6-9~~ pursuant to a waiver of or exception to the provisions of this Chapter that does not comply with the provisions of this Chapter may continue and be maintained, but may not be enlarged or

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expanded, unless such enlargement or expansion is approved pursuant to Article 5 or Article 6 of this Chapter and otherwise complies with applicable provisions of the ~~Fairfax~~ County Code.

The proposed changes are necessary because of the reorganization of the waiver and exception provisions in Articles 5 & 6.

(b) Nothing in this Chapter shall affect the reconstruction of structures destroyed or damaged by any casualty, if such reconstruction is otherwise permitted by law and so long as the structure is reconstructed in the same location and creates no more impervious area than existed with the prior structure. Upon application for a Building Permit to replace such structures, the provisions of this Chapter shall be waived.

Section 118-5-2. Public Utilities, Railroads, Public Roads, and Facilities Exemptions.

The following activities shall be exempt from the provisions of this Chapter to the extent that they are allowed by the Zoning Ordinance and are not prohibited by any other ordinance or law:

(a) The construction, installation, operation and maintenance of electric, natural gas, fiber-optic and telephone transmission lines, railroads, and public roads and their appurtenant structures in accordance with the Erosion and Sediment Control Law (Section 10.1-560 et seq. of the Code of Virginia) and with Chapter 104 of the Fairfax County Code and with the Stormwater Management Act (Section 10.1-603.1 et seq. of the Code of Virginia).

Implements changes to 9 VAC 10-20-150.B.1.

(b) The construction, installation, and maintenance of water lines, storm or sanitary sewer lines including pumping stations, ~~local~~ natural gas lines, underground telecommunications and cable television lines and appurtenant structures owned, permitted, or both by Fairfax County or a regional service authority and subject to the following, as determined by the Director:

(1) To the degree possible, the location of such utilities and facilities shall be outside RPAs;

(2) No more land shall be disturbed than is necessary to provide for the proposed ~~desired~~ utility installation;

(3) All such construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal permits and designed and conducted in a manner that protects water quality; and

(4) Any land disturbance exceeding an area of 2,500 square feet shall comply with Chapter 104 of the Fairfax County Code.

Implements changes to 9 VAC 10-20-150.B.2.

Section 118-5-3. Additional Exemptions.

The following activities shall also be exempt from the provisions of this Chapter to the extent that they are allowed by the Zoning Ordinance and are not prohibited by any other ordinance or law:

(a) *Within Resource Protection Areas:* Water wells, site amenities for passive recreation, historic preservation activities, and archaeological activities, provided that:

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(1) Any land disturbance exceeding an area of twenty-five hundred (2,500) square feet shall comply with Chapter 104 of the Fairfax County Code;

(2) Any required state or federal permits shall have been issued;

(3) Except for boardwalks, pathways, paved paths, ~~and appurtenant structures to boardwalks, pathways and paved paths~~, the location of such activities shall be outside RPAs to the degree possible;

Change requested by the Chesapeake Bay Local Assistance Department. Appurtenant structures are not listed as exempt activities under 9 VAC 10-20-130.2.

(4) No more land shall be disturbed than is necessary to provide for the desired activity. Boardwalks, pathways, and paved paths serving individual residential properties shall be no more than four (4) feet in width except as necessary for handicapped access;

(5) All such activities shall be in compliance with all applicable state and federal permits, and shall be conducted in a manner that protects water quality; and

(6) A written request for an exemption shall be filed with and approved by the Director. Such request should be filed along with any plans of development submitted for review.

(b) *Within Resource Management Areas:* Any land-disturbing activity of twenty-five hundred (2,500) square feet or less in size.

(c) *Silvicultural activities*, provided that such operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in ~~its Best Management Practices Handbook for Forestry Operations~~ the January 1997 edition of *Forestry Best Management Practices for Water Quality in Virginia* as determined by the Virginia Department of Forestry.

Implements changes to 9 VAC 10-20-120.10.

Section 118-5-4. Waivers for Loss of Buildable Area in a Resource Protection Area.

(a) When the application of the RPA buffer area would result in the effective loss of a reasonable buildable area on a lot or parcel recorded prior to October 1, 1989, in accordance with all applicable provisions of the County Code in effect at the time of recordation, encroachments into the buffer area may be approved by the Director in accordance with the following criteria:

(1) Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;

(2) Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel;

(3) The encroachment may not extend into the seaward 50 feet of the buffer area;

(4) The proposed development shall not exceed 10,000 square feet of land disturbance in the RPA buffer, exclusive of land disturbance necessary for the installation of a soil absorption field associated with an individual sewage disposal facility and land disturbance

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necessary to provide access to the lot or parcel and principal structure pursuant to Section 118-2-1(d);

(5) The proposed development shall not create more than 5,000 square feet of impervious surface within the RPA buffer, exclusive of impervious surface necessary to provide access to the lot or parcel and principal structure pursuant to Section 118-2-1(d); and

(6) The lot or parcel must meet the minimum lot size specified for the zoning district in which located or meet the requirements of Section 2-405 of Chapter 112, the Zoning Ordinance, and any other applicable ordinances and laws; and,

(7) The requirements of Section 118-3-2 shall be satisfied or waived pursuant to Section 118-3-2(f)(7); and,

(8) The requirements of Section 118-3-3 shall be satisfied except as specifically provided for in this section to permit an encroachment into the RPA buffer area.

Implements changes to 9 VAC 10-20-130.4.a. This exception has been relocated here from Article 6 so that all the administrative waivers/exceptions are located in Article 5. It combines the existing provisions, with some minor changes, and the new evaluation criteria. The effective date (July 1, 1993) has been replaced with Oct. 1, 1989, to track the State regulations (exceptions between Oct 1, 1989 and the effective date are addressed below). An explicit statement that 118-3-2 & 118-3-3 are to be satisfied has been incorporated and language has been added to clarify that access to the lot includes the driveway to the principal structure. There is a similar set of provisions included in Article 6 to address encroachments into the seaward 50 feet of the buffer which require a public hearing under the State regulations.

(b) When the application of the RPA buffer area would result in the effective loss of a reasonable buildable area on a lot or parcel recorded between October 1, 1989 and ~~March 1, 2002~~ [insert effective date of amendments], in accordance with all applicable provisions of the County Code in effect at the time of recordation, encroachments into the buffer area may be approved by the Director in accordance with the following criteria:

(1) The lot or parcel was created as a result of a legal process in conformance with the Subdivision Ordinance;

(2) Conditions or mitigation measures imposed through a previously approved exception shall be met;

(3) If the use of a BMP was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required; and

(4) The criteria in Section 118-5-4(a)(1) through (8) shall be met.

Implements changes to 9 VAC 10-20-130.4.b. This section was included in the State regulations to address possible problems created by jurisdictions (not Fairfax County) that were incorrectly administering the buffer equivalency provisions of the State regulations and regularly allowing 50 foot reductions of the buffer width for new subdivisions. Because of the expansion of the RPA resulting from the inclusion of perennial streams as RPA components, many lots created between October 1, 1989 and March 1, 2002 that were thought not to have RPAs will have new RPAs designated on them and may need this type of relief.

Section 118-5-5. Exceptions for Minor Additions.

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(a) The Director may waive any or all of the performance criteria and requirements of this Chapter for the construction of additions to principal structures that were established as of July 1, 1993, in accordance with all applicable provisions of the County Code in effect at the time of establishment, which do not result in the creation of 1,000 square feet or more of additional impervious area within an RPA, or the creation of additional impervious area within an RPA that exceeds two (2) percent of the lot area up to a maximum limit of 2,500 square feet, whichever amount is greater. The maximum additional impervious area shall be applied to each lot recorded prior to July 1, 1993, in accordance with all applicable provisions of the County Code in effect at the time of recordation, and shall be a cumulative measure based on the amount of impervious area added to the particular lot after July 1, 1993, including any impervious area allowed under Section 118-6-8. Additions to impervious area shall be allowed to such lots until the maximum additional impervious area allowed is reached on the particular lot. The cumulative limit on the maximum additional impervious area measure shall continue indefinitely, regardless of ownership of the property.

(b) The Director may waive any or all of the performance criteria and requirements of this Chapter for the construction of additions to principal structures established between July 1, 1993, and ~~March 1, 2003~~ [insert effective date of amendments], in accordance with all applicable provisions of the County Code in effect at the time of establishment, on lots that did not require RPAs to be designated on them under the provisions of this Chapter in effect at the time the principal structures were established and which do not result in the creation of 1,000 square feet or more of additional impervious area within an RPA, or the creation of additional impervious area within an RPA that exceeds two (2) percent of the lot area up to a maximum limit of 2,500 square feet, whichever amount is greater. The maximum additional impervious area shall be applied to each lot recorded as of ~~March 1, 2003~~ [insert effective date of amendments], in accordance with all applicable provisions of the County Code in effect at the time of recordation, and shall be a cumulative measure based on the amount of impervious area added to the particular lot after ~~March 1, 2003~~ [insert effective date of amendments], including any impervious area allowed under Section 118-6-8. Additions to impervious area shall be allowed to such lots until the maximum additional impervious area allowed is reached on the particular lot. The cumulative limit on the maximum additional impervious area measure shall continue indefinitely, regardless of ownership of the property.

(c) The Director may approve, deny, or approve with conditions individual exception requests upon a finding that:

(1) The requested exception to the criteria is the minimum necessary to afford relief;

(2) Granting the exception will not confer upon the applicant any special privileges that are denied by this part to other property owners who are subject to its provisions and who are similarly situated;

(3) The exception is in harmony with the purpose and intent of this part and is not of substantial detriment to water quality;

(4) The exception request is not based upon conditions or circumstances that are self-created or self-imposed;

(5) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality;

(6) There will be no net increase in nonpoint source pollutant load. The

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construction of a deck on an existing principal structure will be deemed to have met this finding provided that the deck is constructed over an existing maintained area, rainfall is allowed to pass through the deck, and no additional impervious area is created; and

(7) Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this Chapter and Chapter 104 of the County Code.

Implements changes to 9 VAC 10-20-150.C.4. This section has been relocated from Article 6. Paragraph (a) is essentially the same as the prior language except that the upper limit on new impervious has been set at 2,500 square feet and the conditions required by 10-20-150.A and 10-20-150.C.4 have been added. The added language in finding (6) codifies our current interpretation that standard slatted decks constructed over maintained grass lawns do not constitute an increase in imperviousness and can be added onto existing (pre-1993) houses in the RPA without affecting water quality. For projects other than decks, it will be difficult to meet the requirements of finding (6) unless some type of mitigation is provided.

ARTICLE 6.

Exceptions.

Section 118-6-1. Granting of Exceptions.

Exceptions to the criteria and requirements of this Chapter to permit encroachment into the RPA that do not qualify for administrative review under Article 5 may be granted by the Exception Review Committee or by the Board of Supervisors in conjunction with a rezoning or special exception approval as set forth in this Article with appropriate conditions necessary to preserve the purposes and intent of this Chapter. No exception shall be granted under this Article except after notice and a public hearing and upon the findings as required herein. All exception requests shall be in writing and submitted to the Director. All exception requests shall be submitted in accordance with the requirements of Section 118-6-5 unless modified by the Director and will not be accepted until all the submission requirements have been met. Except as noted below, ~~The~~ Director shall, within 15 days of receipt of a complete application for an exception pursuant to Sections 118-6-3, 118-6-7, or 118-6-8, within 30 days of receipt of a complete application for an exception pursuant to Sections 118-6-4 or 118-6-9, and within 45 days of receipt of a complete application for an exception pursuant to Section 118-6-2 or 118-6-5, approve, deny, or approve with conditions any exception request; within 90 days of receipt of a complete application for an exception pursuant to this Article, unless an extended period is mutually agreed to by the applicant and the Director, forward such exception request to the Exception Review Committee for a public hearing along with a recommendation for approval, denial, or approval with conditions. All exception requests for property that is also the subject of a rezoning or special exception application shall be scheduled concurrently for public hearing with the rezoning or special exception application within twelve (12) months of the date of acceptance, unless an extended period is agreed to by the applicant, and shall be forwarded by the Director to the Board of Supervisors for public hearing along with a recommendation of approval, denial or approval with conditions. If an application is denied or dismissed by the Exception Review Committee or Board of Supervisors, no new application concerning any or all of the same property for the same general use as applied for originally shall be heard by said Exception Review Committee or Board for a period of less than twelve (12) months from the

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date of action by the Exception Review Committee or Board on the original application unless otherwise waived by the Exception Review Committee or Board. If an application is withdrawn prior to commencement of the public hearing, there shall be no limit on a rehearing. If an application is withdrawn after commencement of the public hearing, no new application concerning any or all of the same property for the same general use as applied for originally shall be heard by said Exception Review Committee or Board of Supervisors for a period of less than twelve (12) months from the date of action by the Exception Review Committee or Board on the original application unless otherwise waived by the Exception Review Committee or Board. The time limits set forth in Section 15.2-2259 of the Code of Virginia shall be tolled during the pendency of an exception request. Approval of an exception shall constitute approval for the normal and routine maintenance of the facilities which are developed.

*Implements the requirement for a public hearing included in changes to 9 VAC 10-20-150.C.2.c for exceptions to permit encroachments into the RPA. The 90 day time period established as the legal limit for transmission of the requests to the Exception Review Committee is necessary to allow for review of the more complex applications, discussions with the applicants, refinements of proposals, preparation of staff recommendations, and meeting the legal advertising and notice requirements for the public hearings. The time frames provided are consistent with time frames provided in the Zoning Ordinance for variances which is a similar process. Applications will be processed as expeditiously as possible depending on complexity, staffing levels, and workload. **The Board of Supervisors will hear exceptions associated with rezoning s and special exceptions.***

Section 118-6-2. Conduct of Public Hearings.

All public hearings required by this Article shall be conducted in accordance with the following provisions:

- (a) No public hearing shall be held unless the required notice for same has been satisfied in accordance with the provisions of Section 118-6-3.
- (b) All hearings shall be open to the public. Any person may appear and testify at such hearing, either in person or by an authorized agent or attorney.
- (c) The Exception Review Committee shall by general rule prescribe procedures for the conduct of hearings **to be heard by the Exception Review Committee.**
- (d) The Chairman **of the Exception Review Committee**, upon a vote of the majority of the members, may continue or defer a hearing. If a hearing has been opened and public testimony has been received and there is cause for continuation of a hearing, no formal notice as required by Section 118-6-3 shall be required if the hearing is continued to a date certain. If a hearing is concluded, but action is deferred until a future date, no formal notice as set forth in Section 118-6-3 shall be required prior to action being taken. If a hearing has not been opened, and there is cause for deferral of the hearing, written notice to adjacent property owners as required by Section 118-6-3 shall be remailed, except such notice shall be mailed not less than five (5) days in advance of the public hearing.

The requirement for a public hearing is in 9 VAC 10-20-150.C.2.c. This section has been adapted from Z.O. Section 18-109.

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Section 118-6-3. Required Notice for Public Hearings.

No public hearing shall be held unless documented evidence can be presented that the notice requirements herein have been satisfied. The subject of the public hearing need not be advertised in full, but may be advertised by reference. Every such advertisement shall contain a descriptive summary of the proposed action and shall contain a reference to the place or places within the County where copies of the subject of the public hearing may be examined.

(a) Publication: Public notice of any hearing **to be held by the Exception Review Committee** shall be published once a week for two (2) successive weeks in a local newspaper having general circulation in the County. Such notice shall be published not less than five (5) days nor more than twenty-one (21) days before the date of the hearing, and there shall be a minimum of six (6) days between the first and second publication. The notice shall specify the date, time and place of the hearing and the nature of the matter before the Exception Review Committee. The public notice shall be the responsibility of the Exception Review Committee.

(b) Written Notice to Applicant: For an application for an exception **to be heard by the Exception Review Committee**, the Exception Review Committee shall send written notice of the public hearing to the applicant. Such written notice shall be sent by either first class or certified mail postmarked a minimum of twenty (20) days before the day of the hearing.

(c) Written Notice to Adjacent Property Owners: **For applications to be heard by the Exception Review Committee, the applicant shall send written notice to all owners of property abutting and immediately across the street from and within 500 feet of the subject property and one (1) homeowner association or civic association within the immediate area as approved by the Department of Public Works and Environmental Services. Such notice shall include notice to owners of properties abutting and immediately across the street and within 500 feet of the subject property which lie in an adjoining county or city. If such notice does not result in the notification of five (5) different property owners, then additional notices shall be sent to other property owners in the immediate vicinity so that notices are sent to different owners of not less than five (5) properties. Notice shall be sent to the last known address of the owner(s) as shown in the current Real Estate Tax Assessment files. **Notice to homeowner associations or civic associations shall be sent to the registered office address kept on file with the State Corporation Commission. The applicant shall send a copy of the notification letter to the Board Member in whose district the subject property is located on the same date the abutting property owners are notified.** All written notice shall be sent by certified mail, return receipt requested, and postmarked not less than fifteen (15) days prior to the hearing as evidenced by the postmark date on the white receipts for the certified mailings. Written notice shall include the tax map reference number, the street address of the parcel, the date, time and place of the hearing, and the nature of the matter before the Exception Review Committee. A party's actual notice of, or participation in, the proceedings for which the written notice is required shall waive the right of that party to challenge the validity of the proceeding due to failure of the party to receive the written notice required.**

(d) **If an exception is heard concurrently with a public hearing on proposed rezoning or special exception applications, notification of the proposed exception shall be conducted concurrently with the rezoning and special exception notification and shall meet the requirements of Article 18 of the Zoning Ordinance in lieu of paragraph c above.**

The requirement for notice is in 9 VAC 10-20-150.C.2.c. This section has been adapted from

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Z.O. Section 18-110. Although not required by 9 VAC 10-20-150.C.2.c, a requirement for notification of the local civic association has been added. The notification of a minimum of 5 adjoining property owners and the civic association is consistent with the current Subdivision Ordinance requirements for waivers.

Section 118-6-4. Withdrawal of Application.

An application may be withdrawn at any time by the applicant or his agent by giving notice in writing to the Director. An application also may be withdrawn administratively by the Director if it is determined that the application was accepted in error.

Section 118-6-5. Submission Requirements for Exception Requests.

Submission Requirements for Exception Requests:

- (a) Four (4) copies of an application form provided by the Director and completed and signed by the applicant.
- (b) Four (4) copies of a Water Quality Impact Assessment.
- (c) Ten (10) copies of a plat which meets the submission requirements of Zoning Ordinance Section 9-011, paragraph 2.
- (d) Photographs of the property showing existing structures, terrain and vegetation.
- (e) Four (4) copies of a map identifying classification of soil types, at a scale of one inch equals five hundred feet (1" = 500'), covering an area at least 500 feet beyond the perimeter of the proposed development.
- (f) A statement of justification which addresses how the proposed development complies with the factors set forth in Sections 118-6-6(a) through (f).

The Director, upon written request with justification, may modify or waive the above submission requirements, if it is determined by the Director that the requirement is clearly not necessary for the review of the application. The Director may require the submission of such additional information as he deems necessary to review the application. The requirement for submission of a Water Quality Impact Assessment may only be waived subject to the findings in Section 118-6-6.

The submission requirements are unchanged from the existing provisions.

Section 118-6-6. Required Findings.

Exceptions to the criteria and requirements of this Chapter may be granted only on a finding that:

- (a) The requested exception to the criteria is the minimum necessary to afford relief;
- (b) Granting the exception will not confer upon the applicant any special privileges that are denied by this part to other property owners who are subject to its provisions and who are similarly situated;
- (c) The exception is in harmony with the purpose and intent of this Chapter and is not of substantial detriment to water quality;
- (d) The exception request is not based upon conditions or circumstances that are self-created or

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self-imposed:

(e) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality; and

(f) Other findings, as appropriate and required herein, are met.

These are the findings required by 9 VAC 10-20-150.C.1.

Section 118-6-7 2. Exceptions for Loss of Buildable Area in a Resource Protection Area.

Where the application of the RPA criteria will result in the effective loss of a reasonable buildable area on a lot or parcel ~~established~~ recorded prior to ~~March 1, 2003~~ [insert effective date of amendments], in accordance with ~~the all applicable provisions of the Fairfax County Code in effect at the time of recordation prior to the effective date of this Chapter, or a lot created in accordance with Section 118-6-9 of this Chapter, and the proposed development does not satisfy the criteria for an administrative waiver by the Director under Section 118-5-4, exceptions may be approved in accordance with the following criteria:~~

~~(a) and if:~~ The proposed development does not exceed 10,000 square feet of land disturbance, exclusive of land disturbance necessary for the installation of a soil absorption field associated with an individual sewage disposal facility and land disturbance necessary to provide access to the lot or parcel and principal structure pursuant to Section 118-2-1(d), and;

~~(b) The proposed development does not create more than 5,000 square feet of impervious surface within an RPA, exclusive of impervious surface necessary to provide access to the lot or parcel and principal structure pursuant to Section 118-2-1(d), an exception request to waive or modify the RPA performance criteria and other requirements of this Chapter may be approved by the Director, subject to the following:~~

~~(ca)~~ The lot or parcel must meet the minimum lot size area specified for the zoning district in which located or meet the requirements of Section 2-405 of Chapter 112, the Zoning Ordinance, and any other applicable ordinances and laws; and

(d) Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel.

(e) The requirements of Section 118-3-2 shall be satisfied or waived pursuant to Section 118-3-2(f)(7); and

(f) The requirements of Section 118-3-3 shall be satisfied except as specifically provided for in this section to permit an encroachment into the RPA buffer area.

~~(b) Any exception shall be the minimum necessary to afford relief to achieve a reasonable buildable area for a principal structure and necessary utilities; and~~

~~—(c) Where possible, an area equal to the area encroaching into the RPA buffer area shall be established elsewhere on the lot or parcel in a way to maximize water quality protection.~~

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This section replicates the provisions of the administrative waiver for loss of buildable area but allows encroachment into the seaward 50 feet of the RPA buffer. The reason for having a separate exception category for this activity rather than just relying on the general exception category is that it provides specific standards for the applicant and the Exception Review Committee that 5,000 sq. ft. of impervious area and 10,000 sq. ft. of disturbed area are the upper limits on the allowable encroachment.

~~Section 118-6-3. Exceptions for Water Quality Improvement Facilities or Measures.~~

~~—The following facilities and activities contribute to the improvement of water quality: the construction, installation and maintenance of stream bank stabilization measures, sewage treatment plants, and stormwater management ponds and BMP facilities designed in accordance with the Public Facilities Manual. An exception permitting such a facility or activity and waiving some or all of the criteria and requirements of this Chapter may be approved by the Director subject to the evaluation of a Water Quality Impact Assessment as set forth in Article 4 of this Chapter. Such an exception shall be the minimum necessary to afford relief.~~

Since there were never any specific review criteria or conditions associated with this category, the general exception category should be adequate to cover these activities.

~~Section 118-6-4. Exceptions to Modify the Buffer Area Width for Agricultural Lands.~~

~~—(a) On agricultural lands, the width of the buffer area may be modified by the Director as follows:~~

~~——(1) A reduction to a minimum width of 50 feet from tributary streams and wetlands when the adjacent land is implementing a federal, state, or locally funded agricultural best management practices program, provided that the combination of the reduced buffer area and the best management practices achieve water quality protection, pollutant removal, and water resource conservation of at least the equivalent of an RPA with boundaries 100 feet from tributary streams and wetlands.~~

~~——(2) A reduction to a minimum width of 25 feet from tributary streams and wetlands when a soil and water quality conservation plan, as approved by the Northern Virginia Soil and Water Conservation District, has been implemented on the adjacent land, provided that, in the opinion of the Northern Virginia Soil and Water Conservation District Board, the portion of the plan being implemented for the Chesapeake Bay Preservation Area achieves water quality protection at least the equivalent of that provided by an RPA with boundaries 100 feet from tributary streams and wetlands. Such a plan shall be based upon the Field Office Technical Guide of the U.S. Department of Agriculture Soil Conservation Service and accomplish water quality protection consistent with this Chapter.~~

~~—(b) The buffer area requirements do not apply to agricultural drainage ditches if the adjacent agricultural land has in place best management practices in accordance with a conservation plan approved by the Northern Virginia Soil and Water Conservation District.~~

Implements changes to 9 VAC 10-20-130.5.b. The regulations do not explicitly require that a request be submitted for approval. Proposed encroachments are reviewed by the NVSWCD Board. Therefore, the provisions, as revised by the new regulations, have been moved to Section 118-3-3 where a request is not required.

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~~Section 118-6-5. Resource Protection Area Exceptions.~~

~~—(a) The performance criteria set forth in Sections 118-3-3(b), (c), and (d) regarding development within RPAs may be waived or modified upon the approval of a Resource Protection Area Exception Request (RPAE Request).~~

~~—(b) Submission Requirements for RPAE Requests:~~

~~——(1) Four (4) copies of an application form provided by the Director and completed and signed by the applicant.~~

~~——(2) Four (4) copies of a Water Quality Impact Assessment.~~

~~——(3) Four (4) copies of a plat which meets the submission requirements of Zoning Ordinance Section 9-011, paragraph 2.~~

~~——(4) Photographs of the property showing existing structures, terrain and vegetation.~~

~~——(5) Four (4) copies of a map identifying classification of soil types, at a scale of one inch equals five hundred feet (1" = 500'), covering an area at least 500 feet beyond the perimeter of the proposed development.~~

~~——(6) A statement of justification which addresses how the proposed development complies with the factors set forth in Sections 118-6-6(a) through (g).~~

~~——(7) The Director, upon written request with justification, may modify or waive the submission requirements, if it is determined by the Director that the requirement is clearly not necessary for the review of the application.~~

~~—(c) Review Procedures for RPAE Requests:~~

~~——(1) The Director shall review a properly submitted and completed RPAE request for compliance with the factors set forth in Sections 118-6-6(a) through (g).~~

~~——(2) If the Director determines that the factors set forth in Sections 118-6-6(a) through (g) have been adequately addressed, he may approve the RPAE request.~~

~~——(3) If the Director determines that the factors set forth in Sections 118-6-6(a) through (g) have not been adequately addressed, the Director may disapprove or approve the RPAE request subject to conditions necessary to ensure compliance with the provisions and goals of this Chapter.~~

The submission requirements are covered in new Section 118-6-5 (Submission Requirements for Exception Requests). The Director's review and approval has been replaced by the Exception Review Committee review and approval.

~~Section 118-6-6. Factors for Consideration In Evaluating Resource Protection Area Exceptions Requests.~~

~~—The following factors are to be considered by the Director in evaluating requests pursuant to Section 118-6-5:~~

~~—(a) The nature and extent of the proposed development and its effect on the function of the RPA;~~

~~—(b) The consistency of the proposed development with the water quality purposes and intents of this Chapter and of any applicable performance criteria;~~

~~—(c) Whether the intrusion into and impact on the RPA of the proposed development is the minimum necessary to afford relief to achieve the development or redevelopment;~~

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- ~~—(d) Whether no more land will be disturbed than necessary to achieve the proposed development;~~
- ~~—(e) The distance between the proposed area to be disturbed and RPA components listed in Sections 118-1-7(b)(1) through (4);~~
- ~~—(f) Whether the water quality benefits resulting from the proposed facility or improvement exceed the associated water quality detriments; and~~
- ~~—(g) Whether the proposed area to be disturbed drains into:

 - ~~—(1) an existing BMP facility designed in accordance with the Public Facilities Manual;~~
 - ~~—(2) an existing regional stormwater management facility or system, as designated by the Department of Public Works; or~~
 - ~~—(3) an existing facility that, with respect to the excepted property, meets or exceeds the phosphorus removal criteria of this chapter and for which maintenance is provided in accordance with the Public Facilities Manual.~~~~

These criteria are covered in new Section 118-6-6 (Findings) and elsewhere as applied to specific types of exceptions. Section (g) was not included in the findings because it was never a determining factor in evaluating requests and because these issues are evaluated in the review of compliance with the water quality control requirements.

~~Section 118-6-7. Exceptions to Waive Resource Management Area Performance Criteria.~~

- ~~—The applicable RMA performance criteria or requirements may be waived by the Director for a plan of development provided that the owner of the property submits a written exception request and documentation which demonstrates, to the satisfaction of the Director, all of the following:~~
- ~~—(a) The entire property is located outside of the Water Supply Protection Overlay District described in Chapter 112, the Zoning Ordinance;~~
- ~~—(b) The entire property is located more than 100 feet from the boundaries of all RPAs; and~~
- ~~—(c) The property does not contain one or more of the following in the area to be disturbed:

 - ~~—(1) Highly erodible soils, including steep slopes greater than 15%;~~
 - ~~—(2) Highly permeable soils; or~~
 - ~~—(3) Wetlands.~~~~

This provision was created to provide an opt-out from the county-wide RMA. Development and redevelopment in RMAs is required to minimize impervious area, minimize the removal of natural vegetation, and provide BMPs. There has always been great difficulty in administering the opt-out provision because most soils are highly erodible based on the method required by the State regulations and because most of the requests were for redevelopment sites where the native soils had been disturbed making it impossible to apply the method. As a result, very few waivers were ever granted under this category. Waiver provisions for BMPs which incorporate the new review criteria required by 9 VAC 10-20-150.C.1 are included in Sections 118-3-2(f)(5)&(7). For the above reasons, the opt-out provision is not needed.

Section 118-6-8. Exceptions for Accessory Structures ~~Minor Additions.~~

- (a) The Director may Exceptions to waive any or all of the performance criteria and

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requirements of this Chapter for the construction of accessory structures and uses ~~and additions to principal structures legally in existence as of the effective date of this Chapter which do that were established as of July 1, 1993, in accordance with all applicable provisions of the County Code in effect at the time of establishment, may be approved subject to the following conditions:~~

(1) The accessory structure or use shall not result in the creation of 1,000 square feet or more of additional impervious area within an RPA, or the creation of additional impervious area within an RPA that exceeds two (2) percent of the lot area up to a maximum limit of 2,500 square feet, whichever amount is greater. The maximum additional impervious area shall be applied to each lot legally in existence as of the effective date of this Chapter recorded prior to July 1, 1993, in accordance with all applicable provisions of the County Code in effect at the time of recordation, and shall be a cumulative measure based on the amount of impervious area added to the particular lot after the effective date of this Chapter July 1, 1993, for all uses on the lot requiring an exception or waiver. Additions to impervious area shall be allowed to such lots until the maximum additional impervious area allowed is reached on the particular lot. The cumulative limit on the maximum additional impervious area measure shall continue indefinitely, regardless of ownership of the property.

(2b) The Director may approve, deny, or approve with conditions individual exception requests upon a consideration of whether no more land will be disturbed than is necessary to provide for the proposed activity. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel.

(b) Exceptions to waive any or all of the performance criteria and requirements of this Chapter for the construction of accessory structures and uses to principal structures established between July 1, 1993, and [insert effective date of amendments], in accordance with all applicable provisions of the County Code in effect at the time of establishment, on lots that did not require RPAs to be designated on them under the provisions of this Chapter in effect at the time the principal structures were established, may be approved subject to the following conditions:

(1) The accessory structure or use shall not result in the creation of 1,000 square feet or more of additional impervious area within an RPA, or the creation of additional impervious area within an RPA that exceeds two (2) percent of the lot area up to a maximum limit of 2,500 square feet, whichever amount is greater. The maximum additional impervious area shall be applied to each lot recorded prior to March 1, 2003 [insert effective date of amendments], in accordance with all applicable provisions of the County Code in effect at the time of recordation, and shall be a cumulative measure based on the amount of impervious area added to the particular lot after March 1, 2003 [insert effective date of amendments], for all uses on the lot requiring an exception or waiver. Additions to impervious area shall be allowed to such lots until the maximum additional impervious area allowed is reached on the particular lot. The cumulative limit on the maximum additional impervious area measure shall continue indefinitely, regardless of ownership of the property.

(2) Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel.

The reason for having a separate exception category for accessory structures rather than just relying on the general exception category is that it provides specific standards for the applicant and the Exception Review Committee that 1,000 sq. ft. of impervious area or 2% of

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the lot area up to 2,500 square feet is the upper limit on the allowable encroachment. In addition, an allowance is provided for the construction of accessory structures and additions to structures that were constructed on lots that are impacted by the new RPA designation requirements.

~~Section 118-6-9. Exceptions for Approved and Pending Plans of Development.~~

~~—(a) Upon written request, the Director may Exceptions to waive or modify any or all of the performance criteria and requirements of this Chapter for plans of development which are approved or pending prior to the effective date of this Chapter March 1, 2003, may be approved subject to the following conditions. Plans of development shall be eligible for an exception under this section as follows:~~

~~—(1) Proffered rezoning applications and P-district rezoning applications approved prior to the effective date of this Chapter March 1, 2003. Proffered condition amendments and amendments to approved P-district rezonings may be approved as long as the amendment does not aggravate conflicts with the provisions of this Chapter.~~

~~—(2) Special permit, special exception and variance applications approved prior to the effective date of this Chapter March 1, 2003, provided that the activity authorized is established, or any construction authorized is commenced and diligently prosecuted in accordance with the provisions of Sect. 8-015, Sect. 9-015 or Sect. 18-407 of the Zoning Ordinance, as applicable. Amendments to such special permit, special exception and variance applications may be approved so long as the amendment does not aggravate conflicts with the provisions of this Chapter.~~

~~—(3) Structures for which Building Permits have been approved prior to the effective date of this Chapter March 1, 2003, provided the structure is constructed under the approved Building Permit.~~

~~—(4) Structures and other impervious surfaces shown on PRC preliminary site plans, as required in the PRC District, and site plans filed with the Department of Environmental Management Public Works and Environmental Services prior to the effective date of adoption of this Chapter March 1, 2003, containing required information as set forth in Sect. 17-105106, or Sect. 16-303 of the Zoning Ordinance, as applicable, so long as due diligence is maintained and the properly submitted and accepted plan is approved within twenty-four (24) months of the effective date of this Chapter March 1, 2003. For the purposes of this paragraph, due diligence shall mean the following:~~

~~—(i) If corrections to a properly submitted and accepted plan are deemed necessary by the reviewing authority, a plan containing the revisions shall be resubmitted within six (6) months of its return to the developer by the Division of Design Review Office of Site Development Services. Resubmission of such filed plans may be approved as long as such resubmission does not aggravate conflicts with the provisions of this Chapter.~~

~~—(ii) In the case of the PRC preliminary site plans as required in the PRC District, a site plan shall be submitted in accordance with Sect. 16-205204 of the Zoning Ordinance and shall obtain approval within twelve (12) months of approval of the PRC preliminary site plan by the Department of Environmental Management Public Works and Environmental Services.~~

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~~_____ (iii) If applicable, all required executed agreements and bonds, deposits, easements and fees shall be submitted within twelve (12) months of the date of transmission of the permit package to the developer, or by March 1, 2004 within twelve (12) months of the effective date of this Chapter, whichever is later.~~

~~_____ (iv) The above limitations may be extended only by the Board of Supervisors Exception Review Committee and only where the developer can demonstrate that the timeframes contained herein cannot be met due to the acts or omissions of Fairfax County or the Commonwealth of Virginia beyond his control. Such extensions may be considered only when the developer notifies the Director of the Department of Environmental Management Public Works and Environmental Services in writing of the acts or omissions causing his inability to meet such time limitations before the time limitation expires.~~

~~_____ (5) PRC Preliminary site plans, as required in the PRC District, site plans, or minor site plans, waivers or exceptions approved prior to March 1, 2003, the effective date of this Chapter provided a Building Permit(s) for the structure(s) shown on the approved plan is issued in accordance with Par. 1 of Sect. 17-109110 of the Zoning Ordinance and provided further that the structure(s) is in fact constructed in accordance with such Building Permit(s). Revisions to such approved plans may be approved so long as such revision does not aggravate conflicts with the provisions of this Chapter.~~

~~_____ (6) Preliminary subdivision plats approved prior to March 1, 2003 the effective date of this Chapter, provided that (a) upon application, such preliminary subdivision plat may be reapproved in accordance therewith one time after the effective date March 1, 2003, (b) the subsequent subdivision construction plan or site plan associated with the development is approved within twelve (12) months of the approval or reapproval of the preliminary subdivision plat, as the case may be, (c) the final subdivision plat is recorded in accordance with Section 101-2-5(d)(2) of the Subdivision Ordinance, and (d) the provisions of Paragraph 8 are met. Revisions to such approved plats may be approved so long as such revisions do not aggravate conflicts with provisions of this Chapter.~~

~~_____ (7) Final subdivision plats approved prior to March 1, 2003 the effective date of this Chapter, provided that such record plats are recorded within 180 days of their approval and provided further that the provisions of Paragraph 8 are met.~~

~~_____ (8) Construction plans, grading plans, conservation plans and Building Permits, containing all the required information, filed pursuant to a plat described in Paragraphs 6 or 7 of these provisions, so long as due diligence is maintained. For the purpose of this paragraph due diligence shall mean the following:~~

~~_____ (i) If corrections to a properly submitted and accepted construction plan are deemed necessary by the reviewing authority, a plan containing the revisions shall be resubmitted within six (6) months of its return to the developer by the Division of Design Review Office of Site Development Services. Resubmission of such filed plans may be approved as long as such resubmission does not result in a net increase in impervious surface.~~

~~_____ (ii) If corrections to a properly submitted rough grading plan, grading plan, conservation plan or Building Permit are deemed necessary by the reviewing authority, a plan containing the revisions shall be resubmitted within sixty (60) days of its return to the developer~~

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~~by the Department of Environmental Management Public Works and Environmental Services. Resubmission of such filed plans may be approved as long as such resubmission does not result in a net increase in impervious surface.~~

~~===== (iii) If applicable, all required executed agreements and bonds, deposits, easements and fees shall be submitted within twelve (12) months of the date of transmission of the permit package to the developer, within six (6) months of the date the construction plan is marked recommended for approval, or by March 1, 2004 within twelve (12) months of the effective date of this Chapter, whichever is later.~~

~~===== (iv) Grading plans, conservation plans and Building Permits filed pursuant to a plat described in Paragraph 6 or 7 must be filed within two (2) years of the recordation of the final subdivision plat.~~

~~===== (9) Structures may be built within the footprints shown on over-lot grading plans approved prior to May 21, 1991, where such lots have been validly recorded prior to May 21, 1991 and have been substantially graded in accordance with a subdivision construction plan approved prior to May 21, 1991, which subdivision construction plan shows existing and proposed grading contours and footprints of the proposed structures.~~

~~***The possibility that any such lots remain unbuilt is remote and if they do exist any relief from the ordinance deemed appropriate can be provided through a loss of buildable area exception. Therefore, this provision is no longer needed and is proposed to be deleted.***~~

~~===== (b) In determining compliance with the required findings of Section 118-6-6 the Exception Review Committee shall give due consideration to the following: An exception request may be approved by the Director, subject to the following standards:~~

~~===== (i) All developments shall comply Whether or not compliance with the provisions of this Chapter to the extent possible, provided such compliance does not would preclude fulfillment of any proffered condition, conditions of a P-District rezoning or any condition of a special permit, special exception or variance, in which case the condition shall supersede the provisions of this Chapter only insofar as it conflicts with this Chapter.~~

~~===== (ii) All development shall comply Whether or not compliance with the provisions of this Chapter to the extent possible, provided such compliance does not would result in the reduction of density, floor area ratio, or the relocation of structures or facilities all as shown on the plan of development.~~

~~===== (iii) Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel. Where possible, an area equal to the area encroaching into the RPA buffer area shall be established elsewhere on the lot or parcel in a way to maximize water quality protection.~~

~~===== (c) There shall be no fee assessed for the review of exception requests submitted pursuant to this section.~~

The existing section on pending plans was created as a substitute for grandfather provisions

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which are not provided for in the State regulations. Exception requests can no longer be processed administratively under the new State regulations; therefore, much of the benefit is lost. As a result of input received during the first public hearing and subsequent Planning Commission Environmental Committee/EQAC work sessions, the requirement for pending plans to go through the exception process has been eliminated and replaced with a policy for the treatment of approved and pending plans during the land development process to be endorsed by the Board at the time of adoption of the amended Chesapeake Bay Preservation Ordinance.

Section 118-6-~~109~~. General Resource Protection Area Encroachment Request.

Exceptions to the criteria and requirements of this Chapter to permit encroachment into the RPA that do not qualify for review under Section 118-6-7, Section 118-6-8, or Section 118-6-9 may be granted subject to the additional finding that the water quality benefits resulting from the proposed facility or improvement exceed the associated water quality detriments. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel.

This is the exception category of last resort. It requires one additional finding that makes it more stringent than the other categories. An example of an exception request that would fall under this category is a by-right subdivision that proposes an encroachment into the RPA. In order to meet the additional finding contained herein, such an application would, at a minimum, have to demonstrate that the total phosphorus runoff after development would be the same as if the encroachment had not been allowed.

ARTICLE 7.

Exception Review Committee.

Section 118-7-1. Purpose.

The purpose of the Exception Review Committee shall be to administer the provisions of Article 6 of this Chapter in such a manner that the intent of the Chapter is maintained.

Section 118-7-2. Authority and Establishment.

The Exception Review Committee is established in accordance with the requirements of this Chapter and 9 VAC 10-20-140. The official title of this body shall be the "Exception Review Committee".

Section 118-7-3. Membership.

(a) The Exception Review Committee shall be composed of ~~five-seven~~ (~~5~~7) members ~~who shall be County employees~~ with demonstrated knowledge of and interest in environmental issues and shall be appointed by the ~~Board of Supervisors for a term of four (4) years~~ ~~Director~~.

(b) Members shall exempt themselves from voting on any action in which their financial interests or those of their immediate family or employer are directly involved.

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Section 118-7-4. Officers.

The officers of the Exception Review Committee shall consist of a Chairman, Vice-Chairman, and Secretary.

The Chairman, Vice-Chairman, and Secretary shall be ~~designated by the Director~~ elected by majority vote of the Exception Review Committee at the first Committee meeting each calendar year.

Section 118-7-5. Meetings.

(a) The Exception Review Committee shall ~~meet hold at least one (1) meeting each month~~ at a time and place to be designated by resolution of the Exception Review Committee.

(b) ~~Four (4) Three (3)~~ members of the Exception Review Committee shall constitute a quorum but a lesser number may meet and adjourn.

(c) Special meetings may be called by the Chairman provided at least five (5) days notice of such meeting is given each member in writing.

(d) All public hearings conducted by the Exception Review Committee shall be in accordance with the provisions of Section 118-6-2. All hearings shall be open to the public, and any person affected may appear and testify at such hearing, either in person or by an authorized agent or attorney.

This was listed as Alternative 2 in the re-advertised amendments. Alternative 2 proposes an Exception Review Committee appointed by the Board of Supervisors. The applicant may appeal a decision of the Exception Review Committee to the Board of Supervisors.

Section 118-7-6. Records.

(a) The Exception Review Committee shall keep written records and minutes of all its proceedings, showing evidence presented, findings of fact by the Exception Review Committee, and the vote of each member upon each question, or if absent or failing to vote, such fact.

(b) Every decision of the Exception Review Committee shall be recorded in accordance with standard forms prescribed by the Exception Review Committee, and shall fully set forth the circumstances of the application and the findings on which the decision is based. Every decision of the Exception Review Committee shall be made by resolution adopted by a majority of all of the members present, except as otherwise specifically provided in this Chapter.

Section 118-7-7. Duties.

The purpose of the Exception Review Committee shall be to administer the provisions of Article 6 of this Chapter, hold public hearings as required herein, and approve/disapprove exception requests in such a manner that the intent of the Chapter is maintained.

ARTICLE 78.

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Appeals.

(a) An applicant aggrieved by any decision of the Director of the Department of Public Works and Environmental Services ~~or Environmental Management~~ or the Director of the Department of Health Services ~~or the Exception Review Committee~~ in the administration of this Chapter may, within fifteen (15) days of such decision, appeal the decision to the Board of Supervisors.

(b) An applicant or any other party aggrieved by any decision of the Exception Review Committee in the administration of this Chapter may, within thirty (30) days of such decision, appeal the decision to the Board of Supervisors.

(c) Such appeal shall be filed with the Clerk to the Board of Supervisors and shall state with specificity the provisions of this Chapter which the applicant alleges to have been violated by the decision and the reasons therefor. A copy of the appeal shall also be delivered to the Director of the Department of Public Works and Environmental Services ~~Environmental Management~~ within such thirty (30) ~~fifteen (15)~~ day period.

This combines elements of Alternative 1 and Alternative 2 from the re-advertised amendments. It expands the appeal procedure for decisions of the Exception Review Committee to include persons other than the applicant.

(b) The time limits set forth in Section 15.2-2259 of Va. Code Ann. shall be tolled during the pendency of an application filed pursuant to Paragraph (a) above.

ARTICLE 89.

Violations and Penalties.

Section 118-89-1. General Provisions.

(a) Any building erected or improvements constructed contrary to any of the provisions of this Chapter and any land disturbing activity regardless of area contrary to any of the provisions of this Chapter and any removal of vegetation in Chesapeake Bay Preservation Areas contrary to any of the provisions of this Chapter shall be and the same is hereby declared to be unlawful.

(b) Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this Chapter, or permits any such violation, or fails to comply with any of the requirements hereof, or who erects any building or uses any building or land in violation of the provisions of this Chapter shall be subject to the enforcement provisions of this Article.

(c) Upon becoming aware of any violation of any provisions of this Chapter, the Director shall serve a notice of violation on the property owner, the person committing or permitting the same either in person or by registered or certified mail to the property or the owner's address. Such notice shall specify the provisions of the Chapter which have been violated, the measures needed to remedy the violation, and a reasonable time in which to remedy the violations. Failure to take steps to comply with such notice within the time provided for therein shall constitute a separate violation of this Chapter.

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(d) Restoration of Chesapeake Bay Preservation Areas shall be performed as necessary to meet the intent of this Chapter, the requirements herein, and the requirements of the Public Facilities Manual. In addition to the plantings required by Section 118-3-3(f) and the Public Facilities Manual, the Director may require that trees illegally removed from Chesapeake Bay Preservation Areas be replaced by other trees of the same or comparable species of equal value and/or be replaced 2 for 1 with 2 inch caliper trees. The value of the replacement trees shall not exceed the value of those illegally removed as determined by the formula in the latest revision of the "Guide for Plant Appraisal" prepared by the Council of Tree and Landscape Appraisers and published by the International Society of Arboriculture.

(e) The Director may require the submission of a Water Quality Impact Assessment (WQIA) in accordance with the provisions of Article 4 as a condition for remedying a violation. In addition to the components of the WQIA listed in Section 118-4-3, the WQIA shall include a restoration plan acceptable to the Director for any removal of vegetation from Chesapeake Bay Preservation Areas which does not comply with the provisions of this Chapter.

(f) The Director, on behalf of the Board of Supervisors, may apply to the Fairfax County Circuit Court for injunctive relief to enjoin a violation or a threatened violation of any provision of this Chapter.

Section 118-82-2. Criminal Violations and Penalties.

- (a) Violators of this Chapter shall be guilty of a Class 1 misdemeanor.
- (b) Each day any violation of this Chapter shall continue shall constitute a separate offense.
- (c) In addition to any criminal penalties provided under this Article, any person who violates any provision of this Chapter may be liable to the County in a civil action for damages, or for injunctive relief.

Section 118-82-3. Civil Penalties.

(a) Any person who violates any provision of this Chapter or who violates or fails, neglects, or refuses to obey any local governmental body's or official's final notice, order, rule, regulation, or variance or permit condition authorized under this Chapter shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$5,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the county for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, in such a manner as the court may direct by order, except that where the violator is the county itself or its agent, the court shall direct the penalty to be paid into the state treasury.

(b) With the consent of any person who (1) violates any provision of any local ordinance related to the protection of water quality in Chesapeake Bay Preservation Areas or (2) violates or fails, neglects, or refuses to obey any local governmental body's or official's notice, order, rule, regulation, or variance or permit condition authorized under such ordinance, the local government may provide for the issuance of an order against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each

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violation. Such civil charges shall be paid into the treasury of the county for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, except that where the violator is the county itself or its agent, the civil charges shall be paid into the state treasury. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subsection a above. Civil charges may be in addition to the cost of any restoration required or ordered by the local government body or official.